

State of New Mexico
Children, Youth and Families Department
and
The Regents of the University of New Mexico

Information Technology Agreement
Contract No. 13-690-15244

THIS Information Technology Agreement (“Agreement” or “Contract”) is made by and between the State of New Mexico, **Children, Youth and Families Department**, hereinafter referred to as the “Procuring Agency” and **The Regents of the University of New Mexico**, hereinafter referred to as the “Contractor” and collectively referred to as the “Parties”.

WHEREAS, pursuant to the New Mexico State Use Act (13-1C-1 NMSA 1978);] the Contractor has held itself out as expert in implementing the Scope of Work as contained herein and the Procuring Agency has selected the Contractor as the offeror most advantageous to the State of New Mexico; and

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

ARTICLE 1 – DEFINITIONS

- A. **“Acceptance”** or **“Accepted”** shall mean the approval, after Quality Assurance, of all Deliverables by an Executive Level Representative of the Procuring Agency.
- B. **“Application Deployment Package”** shall mean the centralized delivery of business critical applications including the source code (for custom software), documentation, executable code and deployment tools required to successfully install application software fixes including additions, modifications, or deletions produced by the Contractor.
- C. **“Business Days”** shall mean Monday through Friday, 7:30 a.m. (MST or MDT) to 5:30 p.m. except for federal or state holidays.
- D. **“Change Request”** shall mean the document utilized to request changes or revisions in the Scope of Work – Exhibit A, attached hereto and incorporated herein.
- E. **“Chief Information Officer (“CIO”)** shall mean the Cabinet Secretary/CIO of the Department of Information Technology for the State of New Mexico or Designated Representative.
- F. **“Confidential Information”** means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) that consists of: (1) confidential client information as such term is defined in State or Federal statutes and/or regulations; (2) all non-public State budget, expense, payment and other financial information; (3) all attorney-client privileged work product; (4) all information designated by the Procuring Agency or any other State agency as confidential, including all information designated as confidential under federal or state law or regulations; (5) unless publicly disclosed by the Procuring Agency or the State of New Mexico, the pricing, payments, and terms and conditions of this Agreement, and (6) State information that is utilized, received, or

maintained by the Procuring Agency, the Contractor, or other participating State agencies for the purpose of fulfilling a duty or obligation under this Agreement and that has not been publicly disclosed.

- G. "Contract Manager" shall mean a Qualified person from the Procuring Agency responsible for all aspects of the administration of this Agreement. Under the terms of this Agreement, the Contract Manager shall be Shana Runck or his/her Designated Representative.
- H. "Default" or "Breach" shall mean a violation of this Agreement by either failing to perform one's own contractual obligations or by interfering with another Party's performance of its obligations.
- I. "Deliverable" shall mean any verifiable outcome, result, service or product that must be delivered, developed, performed or produced by the Contractor as defined by the Scope of Work.
- J. "Designated Representative" shall mean a substitute(s) for a title or role, e.g. Contract Manager, when the primary is not available.
- K. "DoIT" shall mean the Department of Information Technology.
- L. "DFA" shall mean the Department of Finance and Administration; "DFA/CRB" shall mean the Department of Finance and Administration, Contracts Review Bureau.
- M. "Escrow" shall mean a legal document (such as the software source code) delivered by the Contractor into the hands of a third party, and to be held by that party until the performance of a condition is Accepted; in the event Contractor fails to perform, the Procuring Agency receives the legal document, in this case, Source Code.
- N. "Enhancement" means any modification including addition(s), modification(s), or deletion(s) that, when made or added to the program, materially changes its or their utility, efficiency, functional capability, or application, but does not constitute solely an error correction.
- O. "Executive Level Representative" shall mean the individual empowered with the authority to represent and make decisions on behalf of the Procuring Agency's executives or his/her Designated Representative.
- P. "GRT" shall mean New Mexico gross receipts tax.
- Q. "Intellectual Property" shall mean any and all proprietary information developed pursuant to the terms of this Agreement.
- R. "Independent Verification and Validation ("IV&V")" shall mean the process of evaluating a Project and the Project's product to determine compliance with specified requirements and the process of determining whether the products of a given development phase fulfill the requirements established during the previous stage, both of which are performed by an entity independent of the Procuring Agency.
- S. "Know How" shall mean all technical information and knowledge including, but not limited to, all documents, computer storage devices, drawings, flow charts, plans, proposals, records, notes, memoranda, manuals and other tangible items containing, relating or causing the enablement of any Intellectual Property developed under this Agreement.
- T. "Payment Invoice" shall mean a detailed, certified and written request for payment of Services by and rendered from the Contractor to the Procuring Agency. Payment Invoice(s) must contain the fixed price Deliverable cost and identify the Deliverable for which the Payment Invoice is submitted.

- U. **“Performance Bond”** shall mean a surety bond which guarantees that the Contractor will fully perform the Contract and guarantees against breach of contract.
- V. **“Project”** shall mean a temporary endeavor undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The Project terminates once the Project scope is achieved and the Project approval is given by the Executive Level Representative and verified by the Procuring Agency CIO to the DoIT.
- W. **“Project Manager”** shall mean a Qualified person from the Procuring Agency responsible for the application of knowledge, skills, tools, and techniques to the Project activities to meet the Project requirements from initiation to close. Under the terms of this Agreement, the Project Manager shall be Shana Runck or his/her Designated Representative.
- X. **“Qualified”** means demonstrated experience performing activities and tasks with Projects.
- Y. **“Quality Assurance”** shall mean a planned and systematic pattern of all actions necessary to provide adequate confidence that a Deliverable conforms to established requirements, customer needs, and user expectations.
- Z. **“Services”** shall mean the tasks, functions, and responsibilities assigned and delegated to the Contractor under this Agreement.
- AA. **“State Purchasing Agent (SPA)”** shall mean the State Purchasing Agent for the State of New Mexico or his/her Designated Representative.
- BB. **“State Purchasing Division (SPD)”** shall mean the State Purchasing Division of the General Services Department for the State of New Mexico.
- CC. **“Software”** shall mean all operating system and application software used by the Contractor to provide the Services under this Agreement.
- DD. **“Software Maintenance”** shall mean the set of activities which result in changes to the originally Accepted (baseline) product set. These changes consist of corrections, insertions, deletions, extensions, and Enhancements to the baseline system.
- EE. **“Source Code”** shall mean the human-readable programming instructions organized into sets of files which represent the business logic for the application which might be easily read as text and subsequently edited, requiring compilation or interpretation into binary or machine-readable form before being directly useable by a computer.
- FF. **“Turnover Plan”** means the written plan developed by the Contractor and approved by the Procuring Agency in the event that the work described in this Agreement transfers to another vendor or the Procuring Agency.

ARTICLE 2 – SCOPE OF WORK

- A. **Scope of Work.** The Contractor shall perform the work as outlined in Exhibit A, attached hereto and incorporated herein by reference.
- B. **Performance Measures.** The Contractor shall substantially perform to the satisfaction of the Procuring Agency the Performance Measures set forth in Exhibit A. In the event the Contractor fails to obtain the results described in Exhibit A, the Procuring Agency may provide written notice to the Contractor of the Default and specify a reasonable period of time in which the Contractor shall advise the Procuring Agency of specific steps it will take to achieve these results and the proposed timetable for implementation. Nothing in

this Section shall be construed to prevent the Procuring Agency from exercising its rights pursuant to Article 6 or Article 16.

- C. Schedule. The Contractor shall meet the due dates, as set forth in Exhibit A, which due dates shall not be altered or waived by the Procuring Agency without prior written approval, through the Amendment process, as defined in Article 25.
- D. License.
Not Applicable. The Parties agree there is no License.
- E. Source Code. Not Applicable. The Parties agree there is no Source Code.
- F. The Procuring Agency's Rights.
 1. Rights to Software. Not Applicable. The Parties agree the Procuring Agency does not have rights to the Software.
 2. Proprietary Rights. The Contractor will reproduce and include the State of New Mexico's copyright and other proprietary notices and product identifications provided by the Contractor on such copies, in whole or in part, or on any form of the Deliverables.
 3. Rights to Data. Any and all data stored on the Contractor's servers or within the Contractors custody, in order to execute this Agreement, is the sole property of the Procuring Agency. The Contractor, subcontractor(s), officers, agents and assigns shall not make use of, disclose, sell, copy or reproduce the Procuring Agency's data in any manner, or provide to any entity or person outside of the Procuring Agency without the express written authorization of the Procuring Agency.

ARTICLE 3 - COMPENSATION

- A. Compensation Schedule. The Procuring Agency shall pay to the Contractor based upon fixed prices for each Deliverable, per the schedule outlined in Exhibit A.
- B. Payment. The total compensation under this Agreement shall not exceed **\$996,288.00** excluding NMGRT. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The Parties do not intend for the Contractor to continue to provide Services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the Procuring Agency when the Services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for Services provided in excess of the total compensation amount without this Agreement being amended in writing prior to services, in excess of the total compensation amount being provided.
Payment shall be made upon Acceptance of each Deliverable according to Article 4 and upon the receipt and acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor's designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) days

of the date of written certification of Acceptance. All Payment Invoices MUST BE received by the Procuring Agency no later than fifteen (15) days after the termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.

Invoices shall be sent to:

Children, Youth and Families Department
Shana Runck
P.O. Drawer 5160
Room 116
Santa Fe, NM 87502

Payment shall be sent to:

Contract and Grant Accounting Office
MSC01 1245
The University of New Mexico
Albuquerque, NM 8711-0001

- C. Taxes. Not Applicable - contract is between two public entities.
- D. Retainage. Not Applicable – The Parties agree there is no retainage.
- E. Performance Bond. Not Applicable. The Parties agree there is no Performance Bond

ARTICLE 4 – ACCEPTANCE

- A. Submission. Upon completion of agreed upon Deliverables as set forth in Article 2 and Exhibit A, Contractor shall submit a Payment Invoice with the Deliverable, or description of the Deliverable, to the Procuring Agency. Each Payment Invoice shall be for the fixed Deliverable price as set forth in Article 2 and Exhibit A.
- B. Acceptance. In accord with Section 13-1-158 NMSA 1978, the Executive Level Representative shall determine if the Deliverable provided meets specifications. No payment shall be made for any Deliverable until the individual Deliverable that is the subject of the Payment Invoice has been Accepted, in writing, by the Executive Level Representative. In order to Accept the Deliverable, the Executive Level Representative, in conjunction with the Project Manager, will assess the Quality Assurance level of the Deliverable and determine, at a minimum, that the Deliverable:
 - 1.) Complies with the Deliverable requirements as defined in Article 2 and Exhibit A
 - 2.) Meets the performance measures for the Deliverable(s) and this Agreement;
 - 3.) Meets or exceeds the generally accepted industry standards and procedures for the Deliverable(s); and
 - 4.) Complies with all the requirements of this Agreement.

If the Deliverable is deemed Acceptable under Quality Assurance by the Executive Level Representative or designee, the Executive Level Representative will notify the Contractor of Acceptance, in writing, within fifteen (15) business days from the date the Executive Level Representative receives the Deliverable(s) and accompanying Payment Invoice.

C. Rejection. Unless the Executive Level Representative gives notice of rejection within the fifteen (15) day business day Acceptance period, the Deliverable will be deemed to have been accepted. If the Deliverable is deemed unacceptable under Quality Assurance, fifteen (15) days from the date the Executive Level Representative receives the Deliverable(s) and accompanying Payment Invoice, the Executive Level Representative will send a consolidated set of comments indicating issues, unacceptable items, and/or requested revisions accompanying the rejection. Upon rejection and receipt of comments, the Contractor will have ten (10) business days to resubmit the Deliverable to the Executive Level Representative with all appropriate corrections or modifications made and/or addressed. The Executive Level Representative will again determine whether the Deliverable(s) is Acceptable under Quality Assurance and provide a written determination within fifteen (15) business days of receipt of the revised or amended Deliverable. If the Deliverable is once again deemed unacceptable under Quality Assurance and thus rejected, the Contractor will be required to provide a remediation plan that shall include a timeline for corrective action acceptable to the Executive Level Representative. The Contractor may also be subject to all damages and remedies attributable to the late delivery of the Deliverable under the terms of this Agreement and available at law or equity. In the event that a Deliverable must be resubmitted more than twice for Acceptance, the Contractor may be deemed as in breach of this Agreement. The Procuring Agency may seek any and all damages and remedies available under the terms of this Agreement and available at law or equity. Additionally, the Procuring Agency may terminate this Agreement.

ARTICLE 5 – TERM

THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE DoIT.

This Agreement shall terminate on **June 30, 2013**, unless terminated pursuant to Article 6. No contract term, including extensions and renewals, shall not exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

ARTICLE 6 – TERMINATION

This Agreement may be terminated as follows:

- A. General. By the either Party upon written notice to be delivered to the other party not less than ten (10) Business Days prior to the intended date of termination.
- B. Appropriations. By the Procuring Agency, if required by changes in State or federal law, or because of court order, or because of insufficient appropriations made available by the United States Congress and/or the New Mexico State Legislature for the performance of this Agreement. The Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Procuring Agency terminates this Agreement pursuant to this subsection, the Procuring Agency

shall provide the Contractor written notice of such termination at least fifteen (15) Business Days prior to the effective date of the termination.

C. Obligations and Waiver. By termination pursuant to this Article, neither Party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. THIS ARTICLE IS NOT EXCLUSIVE AND DOES NOT CONSTITUTE A WAIVER OF ANY OTHER LEGAL RIGHTS AND REMEDIES AFFORDED THE PROCURING AGENCY AND THE STATE OF NEW MEXICO CAUSED BY THE CONTRACTOR'S DEFAULT OR BREACH OF THIS AGREEMENT.

ARTICLE 7 – TERMINATION MANAGEMENT

A. Contractor. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Contractor shall:

- 1.) Transfer, deliver, and/or make readily available to the Procuring Agency property in which the Procuring Agency has a financial interest and any and all data, Know How, Intellectual Property, inventions or property of the Procuring Agency;
- 2.) Incur no further financial obligations for materials, services, or facilities under the Agreement without prior written approval of the Procuring Agency;
- 3.) Terminate all purchase orders or procurements and any subcontractors and cease all work, except as the Procuring Agency may direct, for orderly completion and transition;
- 4.) Take such action as the Procuring Agency may direct, for the protection and preservation of all property and all records related to and required by this Agreement;
- 5.) Agree that the Procuring Agency is not liable for any costs arising out of termination and that the Procuring Agency is liable only for reasonable non-cancelable costs of Deliverables Accepted prior to the termination of the Agreement;
- 6.) Cooperate fully in the closeout or transition of any activities to permit continuity in the administration of Procuring Agency programs;
- 7.) In the event that this Agreement is terminated due to the Contractor's course of performance, negligence or willful misconduct and that course of performance, negligence, or willful misconduct results in reductions in the Procuring Agency's receipt of program funds from any governmental agency, the Contractor shall remit to the Procuring Agency the full amount of the reduction.;
- 8.) Deleted
- 9.) In the event this Agreement is terminated for any reason, or upon its expiration, the Contractor shall assist and cooperate with the Procuring Agency in the orderly and timely transfer of files, computer software, documentation, system turnover plan, Know How, Intellectual Property and other materials, whether provided by the Procuring Agency or created by the Contractor under this Agreement, to the Procuring Agency, including but not limited to, user manuals with complete documentation, functional technical descriptions of each program and data flow diagrams. At the request of the Project Manager, the Contractor shall provide to the

Procuring Agency a copy of the most recent versions of all files, software, Know How, Intellectual Property and documentation, whether provided by the Procuring Agency or created by the Contractor under this Agreement.

B. Procuring Agency. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Procuring Agency shall 1) Retain ownership of all work products and documentation created pursuant to this Agreement; and 2) Pay the Contractor all amounts due for services Accepted prior to the effective date of such termination or expiration.

ARTICLE 8 – INDEMNIFICATION

Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et seq. NMSA 1978, as amended.

ARTICLE 9 – INTELLECTUAL PROPERTY

Ownership. Contractor hereby acknowledges and grants to the Procuring Agency a perpetual, non-exclusive, royalty free license to reproduce, publish, use and copy the Intellectual Property and Know How created or conceived pursuant to, or as a result of, performance of this Agreement.

ARTICLE 10 – INTELLECTUAL PROPERTY INDEMNIFICATION

Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et seq. NMSA 1978, as amended.

ARTICLE 11 - CERTIFICATIONS

A. General. The Contractor hereby expressly certifies the Deliverables as being correct and compliant with the terms of this Agreement, Contractor's official published specification and technical specifications of this Agreement and all generally accepted industry standards. This certification encompasses correction of defective Deliverables and revision of the same, as necessary, including deficiencies found during testing, implementation, or post-implementation phases.

Contractor makes no warranties or representations, express or implied, either in fact or by operation of law, statutory or otherwise, including but not limited to warranties of merchantability or fitness for a particular purpose, non-infringement of third party rights, except those set forth in this agreement. Unless specified in this agreement, all express or implied conditions, representations and warrantied, including any implied warranty of merchantability, fitness for a particular purpose, or non-infringement, are hereby disclaimed.

B. Software– Not Applicable. The Parties agree there is no Software.

ARTICLE 12 – CONTRACTOR PERSONNEL

A. **Key Personnel.** Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the Procuring Agency. Key personnel are those individuals considered by the Procuring Agency to be mandatory to the work to be performed under this Agreement. Key personnel shall be:

Pam Sellers

B. **Personnel Changes.** Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the Procuring Agency. For all personnel, the Procuring Agency reserves the right to require submission of their resumes prior to approval. If the number of Contractor's personnel assigned to the Project is reduced for any reason, Contractor shall, within ten (10) Business Days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to Procuring Agency approval. The Procuring Agency, in its sole discretion, may approve additional time beyond the ten (10) Business Days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Project. The Contractor shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel. The Procuring Agency reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the Procuring Agency, meeting the Procuring Agency's expectations.

ARTICLE 13 – STATUS OF CONTRACTOR

A. **Independent Contractor.** Not Applicable – Agreement is between two public entities.

B. **Subject of Proceedings.** Contractor certifies that neither the Contractor nor any officer, stockholder, director or employee of the Contractor, is presently subject to any litigation or administrative proceeding before any court or administrative body which would have an adverse effect on the Contractor's ability to perform under this Agreement; nor, to the best knowledge of the Contractor, is any such litigation or proceeding presently threatened against it or any of its officers, stockholders, directors or employees. If any such proceeding is initiated or threatened during the term of this Agreement, the Contractor shall immediately disclose such fact to the Procuring Agency.

ARTICLE 14 - CHANGE MANAGEMENT

A. **Changes.** Contractor may only make changes or revisions within the Scope of Work as defined by Article 2 and Exhibit A after receipt of written approval by the Executive Level Representative. Such change under this article may only be made to Tasks or Sub-Task as defined in the Exhibit A. Under no circumstance shall such change made under this article:

1. Deliverable requirements, as outlined in Exhibit A;

2. Due date of any Deliverable, as outlined in Exhibit A;
3. Compensation of any Deliverable, as outlined in Exhibit A;
4. Agreement compensation, as outlined in Article 3; or
5. Agreement termination, as outlined in Article 5.

Changes to the above listed shall only be made by Amendment per Article 25.

B. Change Request Process. In the event that circumstances warrant a change to accomplish the Scope of Work as described above, a Change Request shall be submitted that meets the following criteria:

1. The Project Manager shall draft a written Change Request for review and approval by the Executive Level Representative to include:
 - (a) the name of the person requesting the change;
 - (b) a summary of the required change;
 - (c) the start date for the change;
 - (d) the reason and necessity for change;
 - (e) the elements to be altered; and
 - (f) the impact of the change.
2. The Executive Level Representative shall provide a written decision on the Change Request to the Contractor within a maximum of ten (10) Business Days of receipt of the Change Request. All decisions made by the Executive Level Representative are final. Change Requests, once approved, become a part of the Agreement and become binding as a part of the original Agreement.

ARTICLE 15 – INDEPENDENT VERIFICATION AND VALIDATION

Not Applicable – The Parties agree there is no IV&V.

ARTICLE 16 – DEFAULT/BREACH

In case of Default and/or Breach by the Contractor, for any reason whatsoever, the Procuring Agency and the State of New Mexico may procure the goods or Services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and the Procuring Agency and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law or equity.

ARTICLE 17 – EQUITABLE REMEDIES

Contractor acknowledges that its failure to comply with any provision of this Agreement may cause the Procuring Agency irrevocable harm and that a remedy at law for such a failure may be an inadequate remedy for the Procuring Agency, and the Contractor consents to the Procuring Agency's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Procuring Agency's rights to

obtain equitable relief pursuant to this Agreement may be in addition to, and not in lieu of, any other remedy that Procuring Agency may have under applicable law, including, but not limited to, monetary damages.

ARTICLE 18 - LIABILITY

Contractor shall be liable for damages arising out of injury to persons and/or damage to real or tangible personal property at any time, in any way, if and to the extent that the injury or damage was caused by or due to the fault or negligence of the Contractor or a defect of any equipment provided or installed, provided in whole or in part by the Contractor pursuant to the Agreement, subject to New Mexico law. Contractor shall not be liable for damages arising out of, or caused by, alterations made by the Procuring Agency to any equipment or its installation or for losses caused by the Procuring Agency's fault or negligence. Any liability incurred by a governmental agency in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et seq.

ARTICLE 19 – ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of this Agreement's approval authorities.

ARTICLE 20 – SUBCONTRACTING

- A. General Provision. The Contractor shall not subcontract any portion of this Agreement without the prior written approval of the Procuring Agency. No such subcontracting shall relieve the Contractor from its obligations and liabilities under this Agreement, nor shall any subcontracting obligate payment from the Procuring Agency.
- B. Responsibility for subcontractors. The Contractor must not disclose Confidential Information of the Procuring Agency or of the State of New Mexico to a subcontractor unless and until such subcontractor has agreed in writing to protect the confidentiality of such Confidential Information in the manner required of the Contractor under this Agreement.

ARTICLE 21 – RELEASE

The Contractor's Acceptance of final payment of the amount due under this Agreement shall operate as a release of the Procuring Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

ARTICLE 22 – CONFIDENTIALITY

Any confidential information provided to the contractor clearly marked as confidential by the agency or, developed by the Contractor based on information provided by the agency in the

performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Procuring Agency. Upon termination of this Agreement, Contractor shall deliver all confidential material in its possession to the Procuring Agency within thirty (30) business days of such termination. Contractor acknowledges that failure to deliver such confidential information to the Procuring Agency may result in direct, special and incidental damages.

ARTICLE 23 -CONFLICT OF INTEREST

The Contractor certifies that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer, state employee or former state employee have been followed.

ARTICLE 24 - RECORDS AND AUDIT

A. The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of Services rendered during this Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Procuring Agency, CIO, SPA, and DFA and the New Mexico State Auditor's Office. The Procuring Agency shall have the right to audit billings both before and after payment. Payment for Services under this Agreement shall not foreclose the right of the Procuring Agency to recover excessive or illegal payments.

ARTICLE 25 - AMENDMENT

This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the Parties hereto. No amendment shall be effective or binding unless approved by all of the approval authorities. Amendments are required for the following:

1. Deliverable requirements, as outlined in Exhibit A;
2. Due Date of any Deliverable, as outlined in Exhibit A;
3. Compensation of any Deliverable, as outlined in Exhibit A;
4. Agreement Compensation, as outlined in Article 3; or
5. Agreement termination, as outlined in Article 5.

ARTICLE 26 – NEW MEXICO EMPLOYEES HEALTH COVERAGE

Not Applicable

ARTICLE 27 – NEW MEXICO EMPLOYEES PAY EQUITY REPORTING

Not Applicable

ARTICLE 28 – MERGER, SCOPE, ORDER OF PRECEDENCE

- A. Severable. The provisions of this Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court or agency or commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of this Agreement, which can be given effect without the invalid provision.
- B. Merger/Scope/Order. This Agreement incorporates any and all agreements, covenants and understandings between the Parties concerning the subject matter hereof, and all such agreements, covenants and understanding have been merged into this Agreement. No prior agreement or understanding, verbal or otherwise, of the Parties or their agents or assignees shall be valid or enforceable unless embodied in this Agreement.

ARTICLE 29 – NOTICES

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail (return receipt requested), when sent by overnight carrier, or upon telephone confirmation by Contractor to the sender of receipt of a facsimile communication that is followed by a mailed hard copy from the sender. Notices shall be addressed as follows:

For PROCURING AGENCY

Michelle Randall
Children, Youth and Families Department
PERA Building Room 101
1120 Paseo De Peralta
Santa Fe, NM 87501
505-827-4039

For CONTRACTOR

Timothy Wester
Contract and Grant Administrator
Pre-Award Services, Main
MSC01 1247 The University of New Mexico
1700 Lomas NE, Suite 2200
Albuquerque, New Mexico 87131.0001
505.277.1287
twester@unm.edu

Any change to the Notice individual or the address, shall be effective only in writing.

ARTICLE 30 – GENERAL PROVISIONS

- A. The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, including but not limited to:
 1. Civil and Criminal Penalties. The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.
 2. Equal Opportunity Compliance. The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.
 3. Workers Compensation. The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Procuring Agency.
- B. Applicable Law. The laws of the State of New Mexico shall govern this Agreement. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all such lawsuits arising under or out of any term of this Agreement.
- C. Waiver. A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless expressed and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.
- D. Headings. Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

ARTICLE 31 - SURVIVAL

The Articles entitled Intellectual Property, Intellectual Property Ownership, Confidentiality, and Warranties shall survive the expiration or termination of this Agreement. Software License and Software Escrow agreements entered into in conjunction with this Agreement shall survive the expiration or termination of this Agreement for a period of three (3) years.

ARTICLE 32 - TIME

Calculation of Time. Any time period herein calculated by reference to "days" means calendar days, unless Business Days are used; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or a holiday as observed by the State of New Mexico, the day for such act shall be the first day following that is not a Saturday, Sunday, or such observed holiday.

ARTICLE 33 – FORCE MAJEURE

Neither party shall be liable in damages or have any right to terminate this Agreement for any delay or Default in performing hereunder if such delay or Default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

By: R. Perry Galin Date: 9/13/12
Yolanda Berumen-Defnes Secretary
Children, Youth and Families Department

By: Michael D. Schwantes Date: 9-11-12
Michael D. Schwantes, Director Financial Systems and Restricted Accounting
Regents of the University of New Mexico 37998

By: Damian Aragon Date: 9-12-12
Damian Aragon, Chief Information Officer
Children, Youth and Families Department

Approved for legal sufficiency:

By: Mark H. Horan Date: 9/13/12
Assistant Chief General Counsel
Children, Youth and Families Department

Approved as to information technology contractual specifications and compliance with the Department of Information Technology Act, Chapter 9, Article 27 NMSA 1978 and Executive Orders relating to Information Technology issued by the Governor of the State of New Mexico.

By: Darryl Ackley Date: 9/20/12
Darryl Ackley, State CIO and Cabinet Secretary
Department of Information Technology

EXHIBIT A
UNIVERSITY OF NEW MEXICO
DIVISION OF CONTINUING EDUCATION AND COMMUNITY SERVICES
PREK SUPPORT FY13

Objective #1: To maintain the PreK Program website and the data collection for the State of New Mexico.

A. DEVELOPMENT, MAINTENANCE AND SUPPORT OF www.NewMexicoPrek.org WEBSITE AND DATABASE

		Due Date	Compensation
Development, maintenance and support of www.NewMexicoPrek.org website and database		Monthly through June 30, 2013	\$8,445.50 per month. Not to exceed \$101,346.00
Task Item	Sub Tasks	SCOPE OF WORK DESCRIPTION	
Maintain and support the PreK Program website and the data collection system	Sub 1	<p>The Contractor will:</p> <ul style="list-style-type: none"> • Provide web designer services. • Provide data programmer services. • Continue development of the PreK website including a public area for access by the general public, links to other appropriate websites and information, and a webpage for each funded PreK program that shall include program information, a list of services, and program contact information. • Continue maintenance of the PreK website. • Maintain software and hardware as needed for all current functions of the website and the database. • Maintain a contractor listserv for the Procuring Agency for ongoing communication. 	
	Sub 2	<p>The Contractor will:</p> <ul style="list-style-type: none"> • Work with Procuring Agency's Program Manager to administer agreement. • Submit invoices on a monthly basis to Procuring Agency's Program Manager. • Submit quarterly reports to Procuring Agency. • Train, supervise, and evaluate performance of staff. • Attend meetings as required. 	

B. DATA COLLECTION AND REPORTING

		Due Date	Compensation
Data Collection		Monthly through June 30, 2013	\$4,450.34 per month. Not to exceed \$53,404.00
Task Item	Sub Tasks	SCOPE OF WORK DESCRIPTION	

Support programs and procuring agency in collection of data	Sub 1	<p>The Contractor will:</p> <ul style="list-style-type: none"> Provide training and technical assistance support to CYFD PreK programs Monitor procedures for collecting, and organizing information for input into the data system. Assist all data system users in accessing and using the database information system. Manage and maintain the PreK data collection system, ensuring consistency and integrity of data Oversee collection and reporting of complex, related information. Perform ongoing assessment to enhance and modify existing data system to support all aspects of data management.
Process the New Mexico PreK Observational Assessment data	Sub 2	<ul style="list-style-type: none"> Process the New Mexico PreK Observational Assessment data submitted by all PreK funded programs. Create a method of organizing the data; Aggregate the data; and Maintain required reports for CYFD
Support the Procuring Agency in performance monitoring	Sub 3	<ul style="list-style-type: none"> Generate monthly reports that include current children enrolled in the PreK Program and statistical information related to PreK teacher licensure and education status upon request. Provide data download reports when requested. Support PreK Program Manager in maintaining and/or improve an organized system for document retention as required for the New Mexico PreK programs

C. ANALYSIS OF DATA

Task Item	Sub Tasks	SCOPE OF WORK DESCRIPTION
Analysis of Data		<p>Due Date</p> <p>Monthly through June 30, 2013</p> <p>Compensation</p> <p>\$2,636.42 per month. Not to exceed \$31,637.00</p>
Analyze data as requested by CYFD		<p>The Contractor will:</p> <ul style="list-style-type: none"> Provide data analyst services. Interpret data, including statistical values, and provide advice and consultation regarding implications; make recommendations for adjustments. Provide professional statistical support, to include data collection, assistance in the establishment of data collection instruments and protocol, data analysis/manipulation and management, and reporting. Collect, evaluate, and prepare complex statistical data. Prepare statistical and narrative reports and recommendations, and participate in the analysis and interpretation of data. Create standard and customized electronic reports with comprehensive information as requested by Procuring Agency's Program Manager.

Objective #2: Provide program support, training and technical assistance to the state-funded PreK Programs in New Mexico by conducting consultant visits,

statewide training sessions based on an annual plan, and coordinating the child assessment process.

A. ON-SITE CONSULTATION SUPPORT TO NEW MEXICO PREK TEACHING STAFF AND PROGRAM ADMINISTRATORS FOR UP TO 105 CYFD PREK CLASSROOMS STATEWIDE

		Due Date	Compensation
On-site consultation support to New Mexico PreK teaching staff and program administrators for up to 105 CYFD PreK classrooms statewide		Monthly through June 30, 2013	\$46,301.75 per month. Not to exceed \$555,621.00
Task Item	Sub Tasks	SCOPE OF WORK DESCRIPTION	
Provide on-site consultation support to NM PreK teaching staff and program administrators for up to 105 CYFD PreK classrooms statewide	Sub 1	<p>The Contractor will:</p> <ul style="list-style-type: none"> • Review, update and implement NM PreK Consultant Guidelines. • Conduct regularly scheduled on-site classroom visits to provide consultation for NM PreK Observational Assessment Tools (authentic observation-documentation- curriculum planning process) and developmentally appropriate practice, as well as help develop, support, and track individual program goals. • Conduct Portfolio Coaching visits in classrooms to review and provide feedback to NM PreK teachers on authentic assessment documentation. • Conduct Portfolio Accountability visits in classrooms to ensure that all portfolio documentation is complete. • Conduct on-site NM PreK Program Administrator meetings to review progress towards goals and address concerns. • Communicate on-site, via email and telephone with NM PreK teachers, administrators and internal support staff regarding site visits, assessment documentation, and other NM PreK requirements. • Complete and deliver reports (for classroom, coaching, and accountability visits as well as administrator meetings) to NM PreK teachers, administrators, UNM CE staff and Procuring Agency's Program Manager and staff. • Disseminate peer-reviewed resources to NM PreK teaching staff, internal support staff and administrators. • Provide enhanced on-site consultation support to programs in the Early Childhood Investment Zones. 	
Support the Procuring Agency in performance monitoring	Sub 2	<p>The Contractor will:</p> <ul style="list-style-type: none"> • Work with Procuring Agency's Program Manager to administer agreement. • Attend monthly/quarterly NM PreK Leadership Team meetings. • Record and deliver meeting notes to Procuring Agency's Program Manager. • Train, supervise, and evaluate performance of NM PreK consultants/trainers. • Track and report on consultant services to Procuring Agency's Program Manager. • Develop and deliver NM PreK Training and Consultation Annual Report. • Submit invoices on a monthly basis to Procuring Agency's Program Manager. 	

B. NEW MEXICO PREK OBSERVATIONAL ASSESSMENT TOOLS TRAINING AND ADMINISTRATOR MEETINGS TO PREK TEACHING STAFF AND PROGRAM ADMINISTRATORS FOR UP TO 105 CYFD PREK CLASSROOMS STATEWIDE

		Due Date	Compensation
New Mexico PreK Observational Assessment Tools Training to PreK teaching staff and program administrators for up to 105 CYFD PreK classrooms statewide		Monthly through June 30, 2013	\$12,683 per month. Not to exceed \$152,196
Task Item	Sub Tasks	SCOPE OF WORK DESCRIPTION	
Provide NM PreK Observational Assessment Tools Training and Administrator Meetings to PreK teaching staff and program administrators for up to 105 CYFD PreK classrooms statewide	Sub 1	<p>The Contractor will:</p> <ul style="list-style-type: none"> Design and develop an annual NM PreK Training/Meeting Calendar for FY13, which includes NM PreK Observational Assessment Tools Trainings and Administrator Meetings. Plan, develop, coordinate and deliver NM PreK Observational Assessment Tools Trainings for teachers new to NM PreK, returning teachers, internal support staff and administrators in up to 105 CYFD PreK classrooms to include: arranging dates, times, training space, training teams, registration of participants, as well as providing training content including agendas and slides, training information to PreK programs, training supplies, materials, sign-in sheets, evaluations, AV equipment and travel reimbursement within budget allotments per travel policy. Plan, develop, coordinate and deliver at least two (2) NM PreK Administrator Meetings for administrators in up to 105 CYFD PreK classrooms to include: arranging dates, times, training space, training teams, registration of participants, as well as providing training content including agendas and slides, training information to PreK programs, training supplies, materials, sign-in sheets, evaluations, AV equipment and travel reimbursement within budget allotments per travel policy. Prepare and provide materials for NM PreK Observational Assessment Tools Training and Administrator Meetings including proofing printed material, gathering materials, etc. Follow up on training topics during regularly scheduled consultation visits. Provide enhanced/additional training and administrator meetings from programs in the Early Childhood Investment Zones. 	
Support the Procuring Agency performance monitoring in	Sub 2	<ul style="list-style-type: none"> The Contractor will: Work with Procuring Agency's Program Manager to administer agreement. Attend monthly/quarterly NM PreK Leadership Team meetings. Contract with NM Early Learning Guidelines consultant, Gaye Gronlund, to attend (4) NM PreK Leadership Team meetings with the focus on working with CYFD PreK consultants who are working with CYFD programs in the Early Childhood Investment Zones. Record and deliver meeting notes to Procuring Agency's Program Manager. Train, supervise, and evaluate performance of NM PreK consultants/trainers. Provide training attendance and evaluation reports to Procuring Agency's 	

		<p>Program Manager.</p> <ul style="list-style-type: none"> Submit invoices on a monthly basis to Procuring Agency's Program Manager.
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C. EARLY CHILDHOOD ENVIRONMENT RATING SCALE-REVISED (ECERS-R) SUPPORT TO NEW MEXICO PREK TEACHING STAFF AND PROGRAM ADMINISTRATORS

	Due Date	Compensation
Early Childhood Environment Rating Scale-Revised (ECERS-R) support to New Mexico PreK teaching staff and program administrators	Monthly through June 30, 2013	\$8,507 per month. Not to exceed \$102,084

Task Item	Sub Tasks	SCOPE OF WORK DESCRIPTION
Provide Early Childhood Environment Rating Scale-Revised (ECERS-R/ECERS-E) support to NM PreK teaching staff and program administrators	Sub 1	<p>The Contractor will:</p> <ul style="list-style-type: none"> Design and develop an annual NM PreK Training Calendar for FY13, which includes at least two (2) NM PreK ECERS-R/ECERS-E Trainings. Plan, develop, coordinate and deliver at least two (2) NM PreK ECERS-R/ECERS-E Trainings to include: arranging dates, times, training space, training teams, registration of participants, as well as providing training content including agendas and slides, training information to PreK programs, training supplies, materials, sign-in sheets, evaluations, AV equipment and travel reimbursement within budget allotments per travel policy. Prepare and provide materials for NM PreK ECERS-R/ECERS-E Trainings including proofing printed material, gathering materials, etc. Conduct inter-rater reliability training for NM PreK consultation staff with the ECERS-R State Anchor. Track inter-rater reliability of all NM PreK consultants. Communicate ECERS-R tool changes to NM PreK consultants. Conduct ECERS-R assessment in up to 25% of CYFD NM PreK classrooms. Priority will be given to programs in the Early Childhood Investment Zones. Track observations and create complete and fully detailed narratives in Branagh Environment Rating Scales Software. Facilitate on-site meetings with NM PreK consultant, teaching staff, internal support staff and administrators to report back on ECERS-R findings and set goals. Follow up on NM PreK ECERS-R training topics and goals for classrooms during regularly scheduled consultation visits. Provide enhanced/additional ECERS-R/ECERS-E training for programs in the Early Childhood Investment Zones.

Support the Procuring Agency in performance monitoring	Sub 2	<p>The Contractor will:</p> <ul style="list-style-type: none"> • Work with Procuring Agency's Program Manager to administer agreement. • Attend monthly/quarterly NM PreK Leadership Team meetings. • Record and deliver meeting notes to Procuring Agency's Program Manager. • Train, supervise, and evaluate performance of NM PreK consultants/trainers. • Provide training attendance and evaluation reports to Procuring Agency's Program Manager. • Review uploaded narratives in Branagh Environment Rating Scales Software for accurate/complete information and run ECERS-R reports using software to provide to the Procuring Agency's Program Manager. • Submit invoices on a monthly basis to Procuring Agency's Program Manager.
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FINANCIAL INFORMATION

**UNIVERSITY OF NEW MEXICO
DIVISION OF CONTINUING EDUCATION AND COMMUNITY SERVICES
PREK SUPPORT
FY13**

Objective Number 1:

A.	Development, maintenance and support of website and database	\$101,346.00
B.	Data collection and reporting	\$53,404.00
C.	Analysis of data	\$31,637.00
TOTAL:		\$186,387.00

Objective Number 2:

A.	On-site consultation support to New Mexico PreK teaching staff and program administrators for up to 105 CYFD PreK classrooms statewide. Enhance training support in the Early Childhood Investment Zones.	\$555,621.00
B.	New Mexico Prek Observational Assessment Tools Training to PreK teaching staff and program administrators for up to 105 CYFD PreK classrooms statewide.	\$152,196.00
C.	Early Childhood Environment Rating Scale-Revised (ECERS-R) support to New Mexico PreK teaching staff and program administrators.	\$102,084.00
TOTAL:		\$809,901.00

TOTAL FY13 CONTRACT AMOUNT: **\$996,288.00**